

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 15639 of Robert Ebel, pursuant to 11 DCMR 3105.1 and 3200.2, from the decision of Joseph F. Bottner, Zoning Administrator and the Department of Consumer and Regulatory Affairs, made on October 7, 1991, to the effect that the tenant is entitled to a certificate of occupancy for a rooming/boarding house in a C-3-A/ARTS District at premises 1335 14th Street, N.W. (Square 242, Lot 811).

HEARING DATE: April 22, 1992
DECISION DATE: May 6, 1992

ORDER

SUMMARY OF EVIDENCE:

1. The property which is the subject of this appeal is located at 1335 14th Street, N.W. (Square 242, Lot 811). It is located between Rhode Island Avenue and N Street, N.W. in the Logan Circle neighborhood. The property is located in a C-3-A/ARTS District.

2. The property is developed with a one-story masonry structure, formerly used as a sign shop. The property is leased by Alpha and Omega Prison Ministry, Inc.

3. Joseph F. Bottner, the Zoning Administrator testified at the hearing about the events giving rise to the subject appeal. He stated that on February 27, 1991, the Zoning Division received a building permit application in the name of Alpha and Omega Prison Ministry, requesting permission to convert the subject premises from a commercial use to a halfway house. The existing certificate of occupancy allowed screen printing, sign painting and commercial art. The applicant was advised that the term halfway house was eliminated from the D.C. Zoning Regulations and became a part of the definition of community-based residential facility, which reads as follows:

A residential facility for persons who have a common need for treatment, rehabilitation, assistance or supervision in their daily living. This definition includes, but is not limited to, facilities covered by D.C. Law 2-35, the Community Based Residential Facilities Licensure Act of 1977, in facilities formerly known as convalescent or nursing home, residential halfway house or social service center, philanthropic or eleemosynary institution and personal care home.

The Zoning Administrator also noted the provision in the Zoning Regulations which states:

If an establishment is a community-based residential facility as defined in this section, it shall not be deemed to constitute any other use permitted under the authority of these regulations. A community-based residential facility may include separate living quarters for resident supervisors and their families. All community-based residential facilities shall be included in one or more of the following subcategories: (a) adult rehabilitation home; (b) community residence facility; (c) emergency shelter; (d) health care facility; (e) substance abusers home; (f) youth rehabilitation home; or (g) youth residential care home.

The applicant for the certificate of occupancy was advised that since the halfway house category was no longer part of the Zoning Regulations, she would have to select a category that was specified in the Zoning Regulations. Upon review of the definitions relating to the seven subcategories of a CBRF, the applicant decided that the proposed use would not fall within any of these seven subcategories, but was like a rooming house. The proposed use was then changed from a halfway house to a rooming house. The Zoning Administrator stated that the applicant for the certificate of occupancy met with him and described the intended use and he agreed with her that it did not fall within the category of a community-based residential facility, that it lent itself to what is viewed as a rooming house. Therefore, on April 11, 1991, Building Permit No. B349090 was issued to the Alpha and Omega Prison Ministry authorizing them to add a kitchen, a bath, ten sleeping rooms, as per plans, for a rooming house that would consist of ten rooms.

On April 19, 1991, a permanent Permit No. B360255 was issued authorizing one water and sewer line cut, three showers, one water closet, one washing machine, three basins, one sink, one garbage disposal, and one gas range. This was for the purpose of remodeling as a rooming house.

On May 13, 1991, Electrical Permit No. B365177 was issued for remodeling the building as a rooming house. It authorized the installation of 45 outlets; 40 lights--inside 60 watts, outside 60 watts; one central air conditioner unit; one electric range; one clothes dryer; a garbage disposal; 15 smoke detectors; one fire alarm at two stations; and two bells to be installed.

The Zoning Administrator testified that on June 6, 1991, he received a letter dated June 6, 1991 from Mr. Robert Ebel, who is an ANC Commissioner for ANC 2C. Mr. Ebel questioned the issuance of the building permit relating to the central dining and food

preparation areas. He also raised the issue of parking, and the appropriateness of the driveway which existed from 14th Street.

Upon receipt of the letter from Mr. Ebel, the Zoning Administrator immediately reviewed the plans and determined there was justification for concern on these issues. The Zoning Administrator advised the Zoning Division staff to hold all building permits and occupancy permits relating to the premises.

The Acting Director of the Department of Consumer and Regulatory Affairs (DCRA), Mr. Aubrey Edwards, received a letter from Mr. Ebel questioning the proposed use of the premises. As a result of the letter, there was a meeting with the Zoning Administrator, Mr. Ebel, and Mr. Edwards. There was also another representative from Mr. Edwards' office.

After the meeting, the Zoning Administrator wrote a letter to Nancy Engen, the President of the Alpha and Omega Prison Ministry, requesting a detailed explanation of the proposed operation which should include the process by which rooms are located, identified, and selected, and also a detailed explanation of the type of activities and/or services to be provided at the premises. The letter also requested identification of the operator of the premises, as well as the name, address and description of the type of business activity currently engaged in by the operator.

The Zoning Administrator testified that this letter requested the information in writing to resolve the questions regarding the proposed operations. Prior to this, the proposal was communicated verbally and also by what was shown on the application for the building permit.

The Zoning Administrator stated that on July 1, 1991 he advised Mr. Ebel in writing of his actions. Then on July 10, 1991, he received a letter from Pastor Nancy Engen in response to his July 1, 1991 letter. The letter stated that:

Alpha and Omega Prison Ministry is a non-profit prison Christian ministry assisting families affected by incarceration. We have a board of 10 members; I am the president and directly responsible for the work that is undertaken. Two members are lifetime residents of the District of Columbia, and a third will move into 1335 14th Street, N.W., when completed, as the resident manager of the property. Two more of us are employed in D.C.

Those renting rooms will make application to us which includes two references verifying a drug and alcohol free lifestyle. He must be employed or actively pursuing employment. He must have demonstrated his ability to function successfully in a group setting. Each man will sign a lease. In addition, we

will provide a volunteer to assist him in setting up a successful financial plan.

We expect to have Bible study and services from time to time on this property, also. The property has a large kitchen, and meals will be eaten also. All residents will be former inmates.

Low-income housing is at a premium. Those who have been incarcerated often lose family support and have no security deposit. Over the years we have wanted to find a place which will pay for itself and assist a larger number of people than we have been able to help in individual housing. We believe this facility will meet these needs. We believe this type of program will be positive for the community. We believe this is our Christian mandate to not only preach the gospel, but to live it. Sincerely, Pastor Nancy M. Engen.

The Zoning Administrator testified that the issues relating to the kitchen and driveway were discussed with Pastor Engen. After the discussion, the applicant elected to maintain the kitchen and use it in relation to the operation of a boarding house. She also agreed to eliminate the driveway from 14th Street.

The parking was not an issue because the prior use offset the parking requirements for what was being proposed. Although parking was not required, it was provided inside the building at the rear. Access to the parking area is from the alley.

The Zoning Administrator testified that on August 16, 1991, he received a letter dated August 8, 1991, from Mr. Ebel still questioning the proposed use and the parking. The Zoning Administrator stated that he had written a letter to Mr. Ebel as a follow-up to his July 1st letter, advising him that the plans meet the provisions of the C-3-A ARTS zone district, and that the proposed use will be that of a rooming and boarding house. He also informed Mr. Ebel that parking was not an issue, and the space being provided would be accessible from the alley.

The Zoning Administrator stated that he received another letter dated August 12, 1991, from Pastor Nancy Engen, which reads as follows:

Dear Mr. Bottner, This letter is to inform your office of our intent for the property on 1335 14th Street, Northwest, which we have rented.

We are a non-profit ministry which plans to open a low-income rooming and boarding house for men who need assistance because of incarceration. We have a resident who will live on the premises and oversee the property. This is not a shelter for

homeless people, nor is it a rehabilitation house. The occupants will be employed and will pay room and board for their living privileges. Sincerely, Pastor Nancy M. Engen, President of the Alpha and Omega Prison Ministry.

On August 15, 1991, Building Permit No. B351794 was issued changing the proposed wording of the proposed use to a rooming and boarding house.

On September 9, 1991, Building Permit No. B352322 was issued to construct a board fence across the front of the property, all on private property, with a three-foot wide swinging gate. At the same time, the applicant requested that the Department of Public Works replace the curb on 14th Street.

On October 7, 1991, Certificate of Occupancy No. B161693 was issued to Alpha and Omega Prison Ministry, Incorporated, authorizing the premises at 1335 14th Street, N.W. to be used as a rooming and boarding house.

4. Pastor Engen testified at the hearing about the proposed use of the property. She stated that the ministry will provide low-cost housing for men who have been incarcerated. The ministry decided to rent only to men because the facility does not provide for a great deal of privacy for female residents. She stated that the ministry also decided to require the residents to be employed rather than just seeking employment. She testified that she and others will provide support for the residents through personal contact with them. The ministry will hold its meetings on the property once per week to oversee the property, and to meet and talk with residents of the home.

Pastor Engen testified that while the men must be alcohol and drug free when they come to the house, the ministry will assist them in handling their finances when such assistance is needed. The ministry will monitor the upkeep of the facility and the payment of rent. Drugs will not be allowed on the premises, however, the residents will not be tested for drug use.

Pastor Engen testified that potential residents will be referred to her by people who know that she works with aftercare and placement-type housing. She stated that currently there is no one at the home. Previously, there were two tenants in the facility, and their average length of stay was three weeks.

5. On November 19, 1991, Robert Ebel filed the subject appeal challenging the Zoning Administrator's decision to issue a certificate of occupancy for a rooming/boarding house on the subject property. The appellant maintains that the Zoning Administrator's decision was erroneous because (a) the proposed use does not meet the definition of rooming house in the Zoning

Regulations; (b) the proposed use meets the definition for a community-based residential facility; and (c) the Zoning Regulations prohibit community-based residential facilities from being designated with another use category.

(a) The rooming/boarding house use: The appellant maintains that based on the Zoning Regulations, the proposed use does not meet the definition of a rooming house. The appellant stated that the Zoning Regulations define a rooming house as follows:

a building or part of a building that provides sleeping accommodations for three (3) or more persons who are not members of the immediate family of the resident operator or manager, and in which accommodations are not under the exclusive control of the occupants. 11 DCMR 199 (1991).

Under 11 DCMR Subsection 701.6(i)(4), a transient accommodation in a commercial zone cannot be a rooming house if a central dining or food preparation area is provided for guests.

A boarding house is defined as a "building or part of a building that provides, for compensation, meals or lodging and meals to three (3) or more guests on a monthly or longer basis." Cooking facilities may not be provided in any individual unit of a boarding house. See 11 DCMR 701.6(i)(3) (1991).

The appellant stated that the information provided to the Zoning Administrator in seeking a certificate of occupancy and to DCRA for a building permit demonstrates that the Prison Ministry's building is not a rooming house because a central dining area and kitchen will be provided, in violation of 11 DCMR 701.6(i)(4).

(b) The CBRF definition: The appellant argues that the proposed use is not a boarding house because it meets the definition of CBRF and, therefore, cannot be any other use. The appellant stated that the CBRF is a residential facility for persons who have a common need for treatment, rehabilitation, assistance, or supervision in their daily living. See Speyer v. Barry, 588 A.2d 1147 (D.C. 1991). This definition includes, but is not limited to, facilities covered by the Community Residence Facilities Licensure Act of 1977, D.C. Law 2-35, as amended, and each facility is, under the Zoning Regulations, further defined as included in one or more of the following subcategories: adult rehabilitation home, community residence facility, emergency shelter, health care facility, substance abusers home, youth rehabilitation home, and youth residential care home.

At the public hearing, the appellant argued that the proposed use falls within the community residence facility (CRF) subcategory. A CRF is defined in the Zoning Regulations as follows:

a facility that meets the definition for and is licensed as a community residence facility under the Health Care Facilities and Community Residence Facilities Regulations 22 DCMR Section 3099.1, as that definition may be amended from time to time. 11 DCMR 199 (1991).

Community residence facility is defined in Title 22 as follows:

A facility providing safe, hygienic sheltered living arrangements for one (1) or more individuals aged eighteen (18) years or older (except that, in the case of group homes for mentally retarded persons, no minimum age limitation shall apply), not related by blood or marriage to the Residence Director, who are ambulatory and able to perform the activities of daily living with minimal assistance. The definition includes facilities, including halfway houses and group homes for mentally retarded persons, which provide a sheltered living arrangement for persons who desire or require supervision or assistance within a protective environment because of physical, mental, familial, social circumstances or mental retardation. The definition does not include facilities providing sheltered living arrangements to persons who are in the custody of the District of Columbia Department of Corrections.

6. Ellen McCarthy, an expert in planning and a zoning consultant testified on behalf of the appellant. She stated that in her opinion the subject facility is a CBRF because it is to be a "residential facility" for "persons who have a common need . . . for assistance . . . in their daily living", based on their having been incarcerated. She cited a letter to the Zoning Administrator by Pastor Nancy Engen, the chairperson of the Board of Directors of Alpha and Omega Prison Ministries, Inc., who stated that the proposed clients are "men who need assistance because of incarceration", and who indicated that assistance would be provided through the services of a volunteer who would instruct them on how to budget and control their finances, through the provision of religious services and discussions, and through the on-site supervision by a board member of the prison ministry.

The appellant pointed out that the transient accommodations being offered are not open to the public at large (the hallmark of boarding and rooming houses), rather they are only available to men who have been released from prison. No families or women can "rent" any of the rooms.

Furthermore, the appellant pointed out that the accommodations have been characterized by the ministry as "living privileges" and the perspective residents are required to demonstrate that they can

function in a group setting. The appellant argued that this does not connote a typical rental obligation in a boarding or rooming house.

The appellant stated that under the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983 (the Act), D.C. Code Section 32-1301 et seq., as amended, a community residence facility is defined as follows:

a facility that provides a sheltered living environment for individuals who desire or need such an environment because of their physical, mental, familial, social or other circumstances, and who are not in the custody of the Department of Corrections. All residents of a community residence facility shall be 18 years of age or older, except that, in the case of group homes for mentally retarded persons, no minimum age shall apply, unless this requirement is waived in accordance with Section 32-1305 (e).

The appellant stated that the Act provides for licensing requirements, standards for the operation of such facilities, inspections and enforcement remedies. Thus, D.C. Code Section 32-1309 provides for civil and criminal penalties for the operation of such facilities without a license and for the failure to comply with the standards set forth in the Act. See DCRA v. Farina, 7 OAD 99 (No. 91-1614-C, 1991); In the Matter of Mary L. Watson, 5 OAD 150 (No. 90-036-3, 1990). Pursuant to the Act, the District of Columbia has licensed a number of facilities which provide room and board for ex-prisoners, such as "Efforts for Ex-Convicts" at 1514 8th Street, N.W., and has provided a variety of assistance programs for such individuals.

The appellant argued that under the Zoning Regulations, a facility such as that proposed by the prison ministry is a community residence facility and is required to be licensed as such.

Finally, the appellant noted that pursuant to Section 199 of the Zoning Regulations, if "an establishment is a community-based residential facility as defined in this section, it shall not be deemed to constitute any other use permitted under the authority of these regulations." (Emphasis added). Thus, even if the proposed use could also be considered a boarding house, it cannot be treated as such because the use meets the requirements of a CBRF.

Responding to the argument of the appellant the Zoning Administrator stated that the proposed use is not a CBRF simply because the purpose is to provide housing for people who were once incarcerated and who have gone through an adult rehabilitation program. The people in this building are working people who pay their own rent and board. The purpose of the Alpha and Omega

Prison Ministry is to reach to help people get back into the normal routine of life.

He stated that in his opinion, the issuance of the certificate of occupancy complies with the C-3-A ARTS zone district provisions of the Zoning Regulations.

Factual Issues:

The factual issues raised in this appeal are:

1. Whether a central dining area and an area for food preparation will be provided at the site?
2. Whether the residents have a common need for assistance or supervision in their daily living.
3. Will services be provided by the ministry?

FINDINGS OF FACT:

Based on the evidence of record the Board finds as follows:

1. The ministry will provide a kitchen and central dining room for use by those who rent rooms at the site.
2. The prospective tenants will be former inmates who need assistance in locating low-income housing and help with handling their daily finances.
3. The Alpha and Omega Prison Ministry will give renting preferences to men with prison records.
4. Members of the Alpha and Omega Prison Ministry's Board of Director will meet at the home once a week to become acquainted with the residents and to provide religious guidance and assistance with financial matters.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record the Board concludes that the appellant is appealing the decision of the Zoning Administrator to issue a certificate of occupancy for a rooming/boarding house for property in a C-3-A/ARTS District.

The Board is of the opinion that the appellant has demonstrated error in the decision of the Zoning Administrator. The appellant argues that the use designation is erroneous because the building contains a central dining area and a kitchen, facilities prohibited by the rooming house definition. On the other hand, the Zoning Administrator points out that the portion of

the structure with the rooming house use does not contain a central dining room or food preparation facilities. These facilities are located in the portion of the building containing the boarding house.

The appellant's argument presupposes that the entire building shall have only one use, while the Zoning Administrator's view is that more than one use can be allocated to a single structure. With regard to the rooming house/boarding house use designation, the Board concurs with the view of the Zoning Administrator. The Board notes that the Zoning Regulations' definitions of rooming house and boarding house both begin with the words "a building or part of a building . . ." (emphasis added). This makes it clear that, at least for these two use categories, combined uses are allowed.

However, the Board is of the opinion that the facts in this appeal support the conclusion that the proposed use is a community-based residential facility. A CBRF is defined as follows.

a residential facility for persons who have a common need for treatment, rehabilitation, assistance, or supervision in their daily living. This definition includes, but is not limited to, facilities covered by D.C. Law 2-35, The Community Residence Facilities Licensure Act of 1977, and facilities formerly known as convalescent or nursing home, residential halfway house or social service center, philanthropic or eleemosynary institution, and personal care home. 11 DCMR 199 (1991).

Relying on the statement of Pastor Engen, the Board concludes that the men who will rent rooms at the site have a common need for low-income housing as well as assistance in handling their financial matters on a daily basis. In the Board's opinion, these needs are adequate to meet the CBRF definition.

The Board notes that all CBRFs must be included in one or more of the seven subcategories. In the Board's opinion, the proper subcategory for the proposed use is a community residence facility, which is defined in the Zoning Regulations as follows:

Community residence facility - a facility that meets the definition for and is licensed as a community residence facility under the Health Care Facilities and Community Residence Facilities Regulations, 22 DCMR Section 3099.1, as that definition may be amended from time to time.

Title 22 DCMR Section 3 (1983) provides the following definition of CRF:

Community Residence Facility: A facility providing safe, hygienic sheltered living arrangements for one (1) or more individuals aged eighteen (18) years or older (except that, in the case of group homes for mentally retarded persons, no minimum age limitation shall apply), not related by blood or marriage to the Residence Director, who are ambulatory and able to perform the activities of daily living with minimal assistance. The definition includes facilities, including halfway houses and group homes for mentally retarded persons, which provide a sheltered living arrangement for persons who desire or require supervision or assistance within a protective environment because of physical, mental, familial, social circumstances or mental retardation. The definition does not include facilities providing sheltered living arrangements to persons who are in the custody of the District of Columbia Department of Corrections.

Based on statements made by Pastor Engen, the Board concludes that the Alpha and Omega Prison Ministry will provide safe, hygienic rental units for men who are not related to the Residence Director, and who are able to perform the activities of daily living. The units will be available to former prison inmates who desire assistance in locating affordable housing and in managing their finances. Their need for such assistance arises as a result of social circumstances where former inmates are discriminated against in housing opportunities and where inmates are not taught to handle money upon release from incarceration.


Based on the Board's analysis of the facts and the applicable laws, the Board concludes that the proposed use is a community residence facility-type of CBRF. Having made this determination, the Board concludes that pursuant to the definition of CBRF in the Zoning Regulations, the establishment cannot be deemed to constitute any other use. Therefore, the Board concludes that the Zoning Administrator's determination that the use is a rooming house/boarding house is erroneous. The Board further concludes that the appeal is hereby **GRANTED** and the decision of the Zoning Administrator to issue the subject certificate of occupancy is **REVERSED**.

VOTE: 3-1 (Angel F. Clarens, Paula L. Jewell and Teresh Boasberg to grant; Sheri M. Pruitt opposed to the motion by absentee vote; Carrie L. Thornhill not voting having recused herself).

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BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: FEB 9 1994

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15639ORD/TRW/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15639

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on FEB 9 1994 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

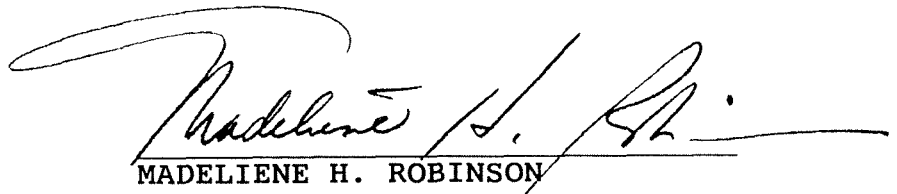
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MADELIENE H. ROBINSON
Director

DATE: FEB 9 1994